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9 UNITED STATES DISTRICT COURT  
10 NORTHERN DISTRICT OF CALIFORNIA

11  
12 BRIAN JONESTOWN MASSACRE, a  
13 doing business as designation for ANTON  
14 NEWCOMBE, an individual,

15 Plaintiff,

16 vs.

17 JEFFREY DAVIES, an individual,

18 Defendant.  
19

Case No:

**COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF**

**JURY TRIAL DEMANDED**

20  
21 Plaintiff alleges as follows:

22 1. BRIAN JONESTOWN MASSACRE is the professional name, recording  
23 project, live performance art and life's work of plaintiff ANTON NEWCOMBE, which  
24 he began about 25 years ago in San Francisco. Since that beginning, Newcombe has  
25 produced, recorded and released more than a dozen albums of original music and played  
26 in venues across the country and throughout the world as BRIAN JONESTOWN  
27 MASSACRE. He has done so with a revolving cast of musicians numbering 40 or more  
28 over the years. At all relevant times, Newcombe has managed, directed, supervised and

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1 overseen the work of BRIAN JONESTOWN MASSACRE and has, with very limited  
2 exception, been cited as and credited for its entire creative output.

3 2. From the very beginning of BRIAN JONESTOWN MASSACRE,  
4 Newcombe has exercised sole and exclusive ownership, administration and/or control of  
5 that creative output without interruption or objection of any kind. More recently he has  
6 done so through two associated business entities, a Recordings Ltd., a United Kingdom  
7 limited company, and Tepid Peppermint Wonderland Music (ASCAP), a doing business  
8 as designation, both of which he controls.

9 3. Enter one, defendant JEFFREY DAVIES. Almost 15 years after  
10 performing with Newcombe, Davies appeared with a Los Angeles-based lawyer by his  
11 side, threatening suit and laying claim to a long list of BRIAN JONESTOWN  
12 MASSACRE works. As might be expected, these works consist of musical  
13 compositions – almost all of which Newcombe wrote in whole or substantial part – and  
14 recorded musical performances – all of which Newcombe produced and recorded at his  
15 own expense as well as directed and in which he was the featured performer, musician  
16 and vocalist. All of the foregoing musical compositions and sound recordings are  
17 copyrighted or copyrightable works.

18 4. Davies' inspiration in emerging literally out of nowhere with these claims  
19 more likely than not derived from the well-known and by-now ubiquitous use of a  
20 BRIAN JONESTOWN MASSACRE work entitled "Straight Up and Down" as the  
21 theme for the hit HBO series *Boardwalk Empire*, now in its fourth season – a use  
22 Newcombe paid his professional representatives to help secure. Toward the end of the  
23 period during which Davies performed with Newcombe, Newcombe conceded a portion  
24 of his songwriting in three musical compositions to Davies and the parties prepared and  
25 submitted contemporaneous copyright registrations to the U.S. Copyright Office  
26 reflecting that arrangement. As it turns out, one of those three musical compositions was  
27 "Straight Up and Down."  
28



1 all of the Subject Works, (b) the right to a share of all gross monies received by  
 2 Newcombe from the use of the Subject Works, and (c) the right to such monies with  
 3 interest from “inception” of the Subject Works (i.e., circa 1992-99).

4 13. Newcombe concedes that Davies has a 50% ownership interest in the  
 5 copyrights in and to the three songs for which there are contemporaneous copyright  
 6 registrations, but no other Subject Works. Moreover, he stands ready, willing and able to  
 7 account and pay Davies for his portion of the monies received from the use of those  
 8 songs – the copyrights in and to which he has controlled and administered at all relevant  
 9 times – net of actual bona fide commissions, fees and other expenses incurred in  
 10 connection with the receipt of those monies, but only for the applicable three-year  
 11 limitations period under 17 U.S.C. § 507(b).

12 14. A judicial declaration of the parties’ respective rights and obligations in  
 13 relation to the Subject Works is necessary and appropriate.

14 15. Accordingly, Newcombe seeks a judgment declaring the parties’ respective  
 15 rights and obligations as set forth below.

#### 16 **PRAYER FOR RELIEF**

17 WHEREFORE, Newcombe respectfully requests judgment against Davies as  
 18 follows:

19 1. A declaration that (a) Davies neither had nor has any interest in any of the  
 20 Subject Works other than a 50% ownership interest in the copyrights in and to the three  
 21 songs entitled “Straight Up and Down,” “Straight Up and Down II” and “Monster,” (b)  
 22 Davies has a right only to 50% of the monies received by Newcombe from the use of  
 23 those songs, net of actual bona fide commissions, fees and other expenses incurred in  
 24 connection with the receipt of those monies, and (c) Davies’ right to his portion of such  
 25 monies is limited to the applicable three-year limitations period under 17 U.S.C. §  
 26 507(b).

27 2. An injunction restraining Davies, his agents, representatives, and all  
 28 persons acting in concert with him or them, from making any further false claims or

1 representations that Davies is an owner of any of the other Subject Works, and otherwise  
2 acting contrary to this Court's declaration of rights;

3 3. Costs and attorneys' fees incurred herein; and

4 4. Such other and further relief as this Court deems just.

5  
6 Dated: August 28, 2013

PHILLIPS, ERLEWINE & GIVEN LLP

7  
8 By: /s/ David M. Given

9 David M. Given

10 Attorneys for Plaintiff

11 **DEMAND FOR JURY TRIAL**

12 Plaintiff hereby demands a jury trial as provided by Rule 38(a) of the Federal Rules  
13 of Civil Procedure.

14 Dated: August 28, 2013

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17 By: /s/ David M. Given

18 David M. Given

19 Attorneys for Plaintiff  
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## EXHIBIT A

## **EXHIBIT A**

### **(Musical Compositions or Songs)**

1. *That Girl Suicide*
2. *Hyper-ventilation*
3. *Straight Up and Down\**
4. *Monster\**
5. *(I Love You) Always*
6. *Straight Up and Down II\**
7. *Stolen*
8. *Jeremy Davies' Tall Tale*

\* Per Copyright Reg. No. PA0000936415 (effective date May 3, 1999), words and music 50% A. Newcombe, 50% J. Davies.

## EXHIBIT B



**EXHIBIT B**  
**(Sound Recordings)**

Album Title: **Space Girl and Other Favorites (1993)**

1. *Crushed*
2. *That Girl Suicide*
3. *When I was Yesterday*

Album Title: **Methodrone (1995)**

1. *Wisdom*
2. *Crushed*
3. *That Girl Suicide*
4. *Wasted*
5. *Hyper-ventilation*

Album Title: **Take It from the Man! (1996)\***

1. *Vacuum Boots*
2. *Who!*
3. *Oh Lord*
4. *Caress*
5. *Straight Up and Down*
6. *Monster*
7. *BSA*
8. *Mary, Please*
9. *Cabin Fever*
10. *The B Song*
11. *Straight Up and Down - long version*

Album Title: **Their Satanic Majesty's Second Request (1996)†**

1. *Anenome*

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\* Per Copyright Reg. No. SR0000261839 (effective date May 3, 1999), sound recording 100% A. Newcombe.

† Per Copyright Reg. No. SR0000261840 (effective date May 3, 1999), sound recording 100% A. Newcombe.

Album Title: **Thank God for Mental Illness (1996)**<sup>‡</sup>

1. *Spanish B*
2. *13*
3. *The Ballad of Jim Jones*
4. *Too Crazy to Care*
5. *Sound of Confusion* (medley)

Album Title: **Strung Out in Heaven (1998)**

1. *Going To Hell*
2. *Jennifer*
3. *I've Been Waiting*
4. *Wisdom*
5. *Dawn*

Album Title: **Bravery, Repetition and Noise (2001)**

1. *Just for Today*
2. *Nevertheless*
3. *You Have Been Disconnected*
4. *Leave Nothing for Sancho*
5. *(I Love You) Always*

Album Title: **If I Love You E.P. (2001)**

1. *You Have Been Disconnected*
2. *Swallowtail*
3. *The Quiet Song*

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<sup>‡</sup> Per Copyright Registration Application (received May 15, 1997), all sound recordings 100% A. Newcombe.

Album Title: **Tepid Peppermint Wonderland: A Retrospective (2004)**

1. *Who!\**
2. *Straight Up and Down\**
3. *Anenome†*
4. *Wisdom*
5. *Just for Today*
6. *Vacuum Boots\**
7. *That Girl Suicide*
8. *Nevertheless*
9. *Let Me Stand Next To Your Flower* (live)
10. *Hide And Seek* (live)
11. *Mary, Please\**
12. *Oh Lord\**
13. *Swallowtail* (live)
14. *The Ballad of Jim Jones‡*
15. *Sue*

Album Title: **Love E.P. (1998)**

1. *I've Been Waiting*

Album Title: **Singles Collection 1992-2011 (2011)**

1. *Anenome†*

Album Title: **Harbor Boat Trips: 01 Copenhagen** by Trentemoller (2009)

1. *Anenome†*